

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Civil Application No. 6064/2005

(Anandrao Yadaorao Solao (Dead) [Thr.L.R's 1-A](#)) Shyam Anandrao Solav & 20 others
VERSUS Balsundari Devi Deosthan Sendur Janaghat Thr. Pujari Shri Digvijaya Guru
Mahadeo Giri Gowasai & 22 others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Chauhan, counsel for the applicant.
Mr.Somalwar, counsel for the respondent no.1.

CORAM : Smt. Vasanti A. Naik, J.

DATE : 10th September, 2007.

Heard the learned counsel for the parties.

By this civil application, the applicant seeks condonation of delay of five months and three days in filing the second appeal. The prayer made in this civil application is strongly opposed by the counsel for the respondents. Reply is also filed to this civil application.

It is the case of the applicants that though the impugned judgment was passed by the Joint District Judge, Amravati on 06.12.2004, the appellants were not aware of the same. It is then stated on behalf of the appellant that the appellants became ware of the judgment passed by the Court only on 06.06.2005. The appellants thereafter on 07.06.2005 applied for grant of certified copy

and the certified copies were issued to the appellant on 08.06.2005. Since there were number of parties who had prosecuted the matter before the Joint District Judge, Amravati and since most of the appellants were living at various villages in Amravati District and some of the appellants were also residing at Nagpur and Baroda, it was not possible for the appellants to file an appeal against the judgment and decree passed by the first appellate Court on 06.12.2004 till 11.08.2005. It is stated in the civil application that there are several appellants and several respondents to this second appeal and since most of them are staying at different places all over Maharashtra, the delay occasioned. It is submitted on behalf of the applicants that the delay is not intentional and in fact the delay is bona fide and there is sufficient cause for condoning the delay in filing the second appeal.

While opposing the prayer made in this civil application, the statements of facts made in paragraph 2 of the civil application were denied by the respondent no.1 in its reply. It is further stated in paragraph 7 of the reply that all the necessary parties to the proceeding were present before the Joint

District Judge, Amravati on 06.12.2004 either personally or through their representative. In view of the aforesaid statement, it was sought to be canvassed on behalf of the respondent no.1 that the applicants very well knew about the judgment dated 06.12.2004 as they were present in the Court on 06.12.2004. Certain other statements were also made in the reply with which we are not concerned as they are not germane for deciding the question of condonation of delay in filing the second appeal.

In view of the reply filed by the respondent no.1, an additional affidavit was filed by the appellants on 20.08.2007 and a copy of the roznama dated 06.12.2004 was also annexed to the additional affidavit. It was stated in the additional affidavit that none of the appellants were present before the Joint District Judge on 06.12.2004 when the judgment was delivered by the first appellate Court. On the basis of the copy of the roznama dated 06.12.2004, it was pointed out on behalf of the appellants that roznama clearly discloses that the counsel for the appellants was present on 06.12.2004 and the Court heard the additional arguments of the counsel for the appellants

(respondent herein). After the appellants filed the additional affidavit, the respondent no.1 also filed an additional affidavit stating therein that Shri Nilawar, Advocate and Shri Jawarkar Advocate, appeared on behalf of the present appellants before the Joint District Judge on 06.12.2004. By placing reliance on the statement of facts made in the reply to the civil application as well as reply to the additional affidavit filed on 07.09.2007, the counsel for the respondent sought the dismissal of the civil application.

A perusal of the civil application, the reply filed thereto and the two affidavits filed on behalf of both the parties along with the order sheet dated 06.12.2004, clearly reveals that the counsel for the present appellant may not have remained present before the Joint District Judge, Amravati on 06.12.2004 when the judgment was delivered. The order sheet dated 06.12.2004 clearly discloses that the counsel for the appellants (respondent herein) was present and the Court heard the additional arguments made by the counsel for the appellants. It was, however, not recorded in the order sheet that either the present appellants or their counsel were present or that any additional arguments

were advanced by the counsel for the appellants in reply to the additional arguments advanced by the respondents herein.

The statement made in the reply filed by the respondents that all the necessary parties were present before the Joint District Judge, Amravati either personally or through their respective counsel, does not appear to be correct in view of the order sheet dated 06.12.2004. The judgment reported in **2001(2) SCC 221** would be of much assistance to the case of the appellants herein as it has been held by the Supreme Court in the aforesaid judgment that the record maintained by the Court is held to be sacrosanct and a doubt cannot be cast on it, casually. Since the order sheet dated 06.12.2004 does not disclose that either the appellants or their counsel were present before the Joint District Judge, Amravati on 06.12.2004, the submission made on behalf of the respondent no.1 that the present appellants as well as their counsel were present in the Court is liable to be discarded. There is, however, some substance in the objection raised on behalf of the respondent no.1 about the extent of the

delay in filing the appeal. Though it is stated in the civil application filed by the appellants that there is a delay of five months and three days, it appears that the delay caused in filing the present appeal is about 245 days. It appears that the appellant has satisfactorily explained the delay in filing the second appeal. Nothing is brought on record except the bare statement in the reply to the civil application to point out that the present appellants were aware about the impugned judgment dated 06.12.2004 at any point of time before 06.06.2005 when the applicants have claimed to have received the knowledge about the passing of the judgment dated 06.12.2004. The only submission made on behalf of the respondents is about the appellants gaining the knowledge of the passing of the judgment on the same day i.e. 06.12.2004. There is hardly any material placed on record to show that the appellants were aware about the judgment prior to 06.06.2005. As already pointed out hereinabove, the statement made in the reply about the presence of the present appellants and their counsel in the Court on 06.12.2004 is rejected. The reason stated in the civil

application for not filing the second appeal immediately after receiving the certified copy of the judgment on 08.06.2005 is also reasonable and plausible. Since the appellants were several in number and since the appellants resided in different parts of the State of Maharashtra, there is sufficient cause for not filing the second appeal within a period of two months from the date of receipt of the certified copy of the judgment on 08.06.2005. Since the appellants are 20 in number and they were residing in various parts of the State of Maharashtra and in Gujrat, it was not possible for the appellants to seek instructions from each other about the presentation of the second appeal in this Court for a long time.

There is sufficient cause in condoning the delay of nearly 245 days in filing the second appeal. The civil application is allowed. The delay in filing the second appeal is condoned. The civil application is disposed of.

JUDGE

APTE